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EXAMINER

HADEN, SALLY CLINE

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte FREDRIK HANSSON and CLAES HAGLUND

Appeal 2016-000265
Application 11/804,393
Technology Center 3700

Before JENNIFER D. BAHR, LINDA E. HORNER, and
BRANDON J. WARNER, *Administrative Patent Judges*.

WARNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Fredrik Hansson and Claes Haglund (“Appellants”)¹ appeal under 35 U.S.C. § 134(a) from the Examiner’s decision rejecting claims 12–24 and 26–31.² *See* Appeal Br. 5, 9. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We REVERSE.

¹ According to Appellants, the real party in interest is Honeywell Safety Products USA, Inc. Appeal Br. 3.

² Claims 1–11 have been canceled (*See* Appeal Br. 5), and claim 25 stands objected to as being dependent upon a rejected base claim, but is indicated as being otherwise allowable if rewritten in independent form

CLAIMED SUBJECT MATTER

Appellants' disclosed invention relates to "an earmuff." Spec., p. 2,
1. 6. Claims 12, 22, and 28 are independent. Claim 12, reproduced below
with emphasis added, is illustrative of the subject matter on appeal.

12. An earmuff comprising a cup-shaped cap, which has an
edge portion defining an opening, and an annular element
which is arranged to extend along said edge portion, the cup-
shaped cap and the annular element being secured to one
another by a locking means,

wherein the earmuff further comprises *at least one
pressure-equalizing means, which is arranged between and in
contact with the edge portion of the cup-shaped cap and the
annular element*, wherein

said at least one pressure-equalizing means being
arranged in an engaging surface of said locking means, said
engaging surface being arranged between the cup-shaped cap
and the annular element, and wherein

the engaging surface extending along the opening and
having a width, the pressure-equalizing means being arranged
to extend along the opening along a first portion of the width of
the engaging surface.

EVIDENCE

The Examiner relied on the following evidence in rejecting the claims
on appeal:

Lundin

US 5,241,971

Sept. 7, 1993

including all of the limitations of the base claim and any intervening claims
(See Final Act. 9).

REJECTION

The following rejection is before us for review: Claims 12–24 and 26–31 stand rejected under 35 U.S.C. § 102(b) as anticipated by Lundin. Final Act. 2–8.

ANALYSIS

Independent claims 12 and 28 recite, in relevant part, “at least one pressure-equalizing means, which is arranged *between and in contact with the edge portion of the cup-shaped cap and the annular element.*” Appeal Br. 44, 46, Claims App. (emphasis added). Independent claim 22 recites a substantially similar limitation. *See id.* at 45. Appellants argue that Lundin does not disclose such a feature, because “element 13 of Lundin is not located/positioned between the annular element (e.g. element 5 of Lundin) and the edge portion of the cup-shaped cap (e.g. element 2 of Lundin).” Appeal Br. 15 (emphasis omitted); *see also* Reply Br. 6–8. We agree.

In rejecting the independent claims, the Examiner finds that Lundin discloses an earmuff including “at least one pressure-equalizing means (13), which is arranged between and in contact with the edge portion of the cup-shaped cap and the annular element (fig 2).” Final Act. 3, 7; *see id.* at 5 (finding that Lundin discloses “at least one pressure-equalizing means (13) arranged between and in contact (at least indirect contact) with both the cap end of the cup-shaped cap and the annular element (fig 2)”). The Examiner clarifies that “at least portions of pressure-equalizing means/ elastomeric insert 13 are between at least *portions* of cup-shaped cap/ outer shell 2 and annular element/ outer sealing ring 5.” Ans. 3 (emphasis added) (citing

Lundin, Fig. 1; Fig. 2 (as reproduced and annotated on page 4 of the Answer)).

We agree with Appellants that Lundin fails to disclose that insert 13 is arranged between the *edge portion* of the cup-shaped cap and annular element, as recited in the independent claims. *See* Reply Br. 6–7. In this regard, each of independent claims 12, 22, and 28 recites that the “cup-shaped cap . . . has an edge portion defining an opening.” Appeal Br. 44–46, Claims App. Also, Appellants’ Specification describes that “cap 4 is in the form of a cup and has an edge portion 12 which defines an opening 13 of the cap.” Spec., p. 9, ll. 4–5; *see also id.*, Fig. 5 (depicting edge portion 12 of cap 4). Although we agree with the Examiner that some portions of Lundin’s insert 13 may be arranged between *portions* of outer shell 2 and sealing ring 5 (*see* Ans. 3–4, including annotated Figure 2 of Lundin), the Examiner does not identify—nor do we discern—any disclosure in Lundin that a portion of insert 13 is arranged between the *edge portion* of outer shell 2 (i.e., defining an opening of outer shell 2) and sealing ring 5. In other words, the Examiner’s finding that Lundin discloses a pressure equalizing means arranged between the *edge portion* of the cup-shaped cap and annular element is not supported by a preponderance of the evidence.

Accordingly, based on the record before us—because an anticipation rejection requires a finding in a single reference of each and every limitation as set forth in the claims—we do not sustain the rejection of claims 12–24 and 26–31 under 35 U.S.C. § 102(b) as anticipated by Lundin.

Appeal 2016-000265
Application 11/804,393

DECISION

We REVERSE the Examiner's decision rejecting claims 12–24 and 26–31 under 35 U.S.C. § 102(b) as anticipated by Lundin.

REVERSED